



# THE INTERIM

July 2010

A monthly newsletter of the Montana Legislative Branch

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**The Interim**, along with up-to-date information about interim committees, is also available on the Legislative Branch Website at [leg.mt.gov](http://leg.mt.gov).

Check out the newly updated and redesigned Legislative Fiscal Division website at [leg.mt.gov/fiscal](http://leg.mt.gov/fiscal)

## First Teachers Institute on Rep. Democracy Draws 28 Participants, Gets Rave Reviews

Twenty-eight teachers from every corner of Montana came to the state Capitol June 14 for the first Teachers Institute on Representative Democracy and the Legislative Process. They went home two days later raving about the experience and the knowledge they gained.

"It was excellent in every way," said one participant. "It was well organized, all of the speakers, legislators, and presenters were wonderful, the keynote speaker was excellent. There was literally nothing that was not done well."

The Legislative Council was one of the primary sponsors of the event, which attracted mostly middle school and high school teachers of government, history, and social studies. The educators attended presentations by legislative staff on redistricting and budgeting, as well as a session on voting and elections by Secretary of State Linda McCulloch. They also participated in a realistic mock committee



*Rep. Dennis Himmelberger, at right, discusses the role of the citizen legislator during a panel discussion at the Teachers Institute on Representative Democracy and the Legislative Process. Other panelists were, from left to right, Rep. Diane Sands (just outside photo frame), Sen. Bob Story, Rep. Jesse O'Hara, Sen. Trudi Schmidt, and Rep. JP Pommichowski.*



*Dr. Alan Rosenthal, professor of public policy and political science at Rutgers University, impresses teachers with the importance of teaching their students about representative democracy.*

hearing with legislative staff after being assigned roles as senators, lobbyists, and citizen opponents and proponents.

McCulloch introduced the keynote speaker, Dr. Alan Rosenthal, at a dinner June 14. Rosenthal is a professor of public policy and political science at Rutgers University. His visit was sponsored by the National Conference of State Legislatures.

Rosenthal discussed efforts by NCSL and partnering civic education organizations to improve the teaching of civic education in the schools. He provided the teachers with a set of lesson plans he has developed to teach an appreciation of representative democracy, how legislators make decisions, and “what makes lawmakers tick.”

Members of the Legislative Finance Committee, in town for an interim meeting, also attended the dinner and got a chance to visit with the teachers.

Perhaps the highlight of the legislative portion of the institute was a pair of panel discussions with Montana legislators that offered a glimpse into their motivations and

perspectives. The panelists, who volunteered their time, were Sen. Bob Story, Sen. Trudi Schmidt, Rep. Dennis Himmelberger, Rep. Jesse O’Hara, Rep. JP Pomnichowski, and Rep. Diane Sands. They discussed their views on the topics “What Does It Mean to Be a Citizen Legislature?” and “How Does a Legislator Represent Constituents?”

Rosenthal, who attended the first discussion, said he thought it was the best legislator panel he has seen in his 40-year career of working with state legislatures.

The legislative panel discussions and other aspects of the institute are being broadcast periodically on TVMT, the state government public-access television network. You can find your local TVMT channel at [leg.mt.gov/tvmt](http://leg.mt.gov/tvmt).

Other sponsors of the event were Humanities Montana, Project Citizen, Teaching Representative Democracy in America, and the Secretary of State’s Office. For more information, contact Gayle Shirley, legislative information officer, at 406-444-2957 or [gshirley@mt.gov](mailto:gshirley@mt.gov).

## CFHHS Set to Review Medical Marijuana Recommendations at Late June Meeting

The Children, Families, Health, and Human Services Interim Committee was slated to continue its review of Montana’s medical marijuana law during its June 28 meeting. The committee was to receive a set of recommendations from a work group made up of medical marijuana providers and law enforcement, local government, and school representatives. The work group met three times during late May and early June in an attempt to develop consensus proposals for changes to the law.

The committee decided to review the Montana Medical Marijuana Act because of a number of issues that have emerged across the state this year, as the number of people eligible to use the drug increased to more than 16,000.

The committee also planned to hear more about federal health care legislation and the costs of defensive medicine, as part of its SJR 35 study of health care.

Coverage of the June committee meeting will be in the August issue of *The Interim*. Meeting materials are available on the committee website at [leg.mt.gov/cfhhs](http://leg.mt.gov/cfhhs).

## Redistricting Commission Adopts Criteria for Legislative, Congressional Districts

The Districting and Apportionment Commission adopted four mandatory and three discretionary redistricting criteria at its May 28 meeting. The commission will apply these criteria when it redraws state legislative districts after census data are released on April 1, 2011.

The commission also adopted one mandatory criterion for congressional districts, although Montana is not expected to regain a second seat in the U.S. House of Representatives. The commission must file its final plan for congressional districts with the Montana Secretary of State within 90 days after the official census data are released.

The commission is required to adopt certain mandatory criteria that are set out in the U.S. and Montana constitutions, federal law, and court decisions. The commission may also adopt discretionary criteria to guide the mapping process. Once adopted, the criteria apply to each legislative district that the commission creates.

### Mandatory, Discretionary Criteria

The commission adopted the following mandatory criteria for mapping state legislative districts:

- **Population equality and maximum population deviation.** Each legislative district shall be as nearly equal in population as is practicable (Montana Constitution). It is the goal of the commission that each district have a population of [an ideal population count that will be determined after census data are released]. Any deviation from the ideal population may not exceed plus or minus 3 percent. Each deviation will be accompanied by an explanation of the mandatory or discretionary criteria justifying the deviation. An explanation of the deviation shall be articulated and made part of the written record that accompanies each district description in the commission report.
- **Compact and contiguous districts.** Each district shall consist of compact and contiguous territory (Montana Constitution). The commission may use, but not be limited to, a general appearance test regarding compactness of the district and consider the district's functional compactness in terms of travel and transportation, communication, and geography.

- **Protection of minority voting rights and compliance with the Voting Rights Act.** No district, plan, or proposal for a plan is acceptable if it affords members of a racial or language minority group "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." (42 U.S.C. 1973).
- **Race.** Race cannot be the predominant factor to which the traditional discretionary criteria are subordinated. (*Shaw v. Reno*, 509 U.S. 630 (1993)).

The commission adopted the following discretionary criteria for mapping state legislative districts:

- **Following the lines of political units.** The commission will consider the boundary lines of counties, cities, towns, school districts, Indian reservations, neighborhood commissions, and other political units.
- **Following geographical boundaries.** Legislative district lines will be drawn to follow geographic boundaries as provided in the TIGER/Line files of the U.S. Bureau of the Census.
- **Keeping communities of interest intact.** The commission will consider keeping communities of interest intact. Communities of interest can be based on Indian reservations, urban interests, suburban interests, rural interests, neighborhoods, trade areas, geographic location, communication and transportation networks, media markets, social, cultural and economic interests, or occupations and lifestyles.

Audio files and approved minutes from the commission's three public hearings are now available on the "Meetings" page of the commission website at [leg.mt.gov/districting](http://leg.mt.gov/districting). The website also contains the written public comments received before the May 28 meeting and the audio and video files of that meeting.

### Next Commission Meeting

The commission has not scheduled its next meeting, but when it does, the date and other meeting information will be posted at [leg.mt.gov/districting](http://leg.mt.gov/districting), and notice will be sent to interested individuals on the commission's email list. To sign up for email updates, go to the commission website or [leg.mt.gov/css/Lyris/email\\_logon.asp](http://leg.mt.gov/css/Lyris/email_logon.asp).

For more information about the Districting and Apportionment Commission, contact commission staff Rachel Weiss, 406-444-5367; Joe Kolman, 406-444-9280; or Lisa Mecklenberg Jackson, 406-444-4024; or email [districting@mt.gov](mailto:districting@mt.gov).

## Economic Affairs Panel Proceeds with Work Comp Legislation, Livestock Lab Study

A parade of Labor-Management Advisory Council members endorsed a proposed package of changes to state workers' compensation laws at the Economic Affairs Interim Committee meeting May 25-26.

The advisory council's proposal incorporates many of the topics contained in the committee's SJR 30 study of workers' compensation. The advisory council's suggested changes to statute would:

- allow closure of claims within 3 years;
- provide a method for paying attorney fees that would not be subtracted from medical providers' fees; and
- change the way certain benefits, including rehabilitation services, are handled.

The advisory council estimated that its proposal would save the entire workers' compensation system \$150 million. A table showing projected costs and savings of the proposal, along with other meeting materials, is available on the committee website at [leg.mt.gov/eaic](http://leg.mt.gov/eaic).

## Shared Laboratory Facilities

The committee also took action on its SJR 14 study of the Department of Livestock's veterinarian diagnostic laboratory by sending letters to the department, the Board of Livestock, the Department of Fish, Wildlife, and Parks, and the president of Montana State University asking what options and support for collaboration are available for laboratories to either share space or certain facilities.

The veterinarian diagnostic laboratory has a provisional accreditation. To remain accredited it must show progress toward correcting problems such as deteriorating facilities, unstable funding sources, and noncompetitive salary levels. Information about the viability of outsourcing tests for brucellosis and other livestock diseases will be presented at the committee's remaining meetings during this interim.

The committee voted specifically to exclude the grain laboratory in Great Falls and the seed laboratory in Bozeman from consideration for shared facilities.

## Other Topics

Also at the May meeting:

- The State Auditor's Office and the Departments of Commerce, Agriculture, and Labor and Industry presented their proposed legislation for the 2011 session.
- The chief legal counsel for the State Auditor's Office discussed plans to use an informal monitoring process to determine compliance with the "no-steering" laws, which prohibit insurers from requiring use of certain automotive repair shops.
- Jerry Keck of the Department of Labor and Industry informed the committee of the department's decision to change a proposed rule to match federal rules regarding treatment of minimum wage and overtime for certain administrative and professional employees.
- Representatives of Montana State Fund and the Montana Chamber of Commerce discussed implementation of legislation aimed at helping small businesses to adopt safety and return-to-work programs in an effort to lower their workers' compensation premium rates.
- A subcommittee reported on its study of ways to promote sharing of information among insurers, injured workers, employers, and medical providers to appropriately encourage the injured worker's return to work without violating state privacy requirements.
- An actuary hired by the Department of Administration, along with department and Montana State Fund officials, discussed implications if the state chooses to self-insure for workers' compensation rather than insure through the State Fund. The actuarial analysis showed that the state will pay Montana State Fund \$17.6 million in workers' compensation premiums for FY 2010. By self-insuring, the state could save an estimated \$900,000. Going with a private insurer would cost about \$2 million more than the FY 2010 premium with Montana State Fund.
- A Belgrade veterinarian representing the U.S. Department of Agriculture's Animal, Plant and Health

Inspection Service (APHIS) discussed the international trade implications associated with brucellosis-free status. He noted that the major remaining concentration of brucellosis in the nation is in the Greater Yellowstone Area.

- The presiding officer of the Board of Livestock and executive officer Christian Mackay spoke about the unlikely prospect of changes to testing and herd plan requirements for an area near Yellowstone National Park, designated as a surveillance area for brucellosis.

Coverage of the committee's June 29 meeting will be in the August issue of *The Interim* along with proposed agenda items for the committee's final meeting Aug. 19-20. For more information, visit the committee website at [leg.mt.gov/eaic](http://leg.mt.gov/eaic) or contact Pat Murdo, committee staff, at 406-444-3064 or [pmurdo@mt.gov](mailto:pmurdo@mt.gov).

## Education, Local Govt. Committee Seeks Rule Postponement, Requests Bill Drafts

At its June meeting, the Education and Local Government Interim Committee directed staff to send a letter to the Department of Labor and Industry asking that it postpone filing rules developed as required under 50-60-901 and 50-60-902, MCA. The proposed rules, which have been through the hearings process and await final filing, provide a list of construction techniques that may be required by a local government to mitigate wildfire hazards to structures in a proposed subdivision.

ELG based its request on a concern that some communities have not finished mapping their wildland-urban interface areas and so the rules would be premature.

The committee also requested three bill drafts for consideration at its August meeting. It directed staff to:

- continue working with school district, county, and Department of Revenue representatives to prepare a bill draft to amend county and school district budgeting deadlines;
- prepare a bill draft that would require the various state entities that deal with historic preservation to meet on a regular basis in an effort to coordinate services and to provide reports on these meetings to the Legislature; and
- prepare a bill draft that would amend the process for establishing community college districts.

In addition, the committee requested the drafting of three legislative proposals on behalf of the Office of Public Instruction:

- Graduation Matters Montana: Reduce High School Dropouts
- Prevent Transfer out of District Transportation Fund
- Eliminate the Obsolete Rental Fee for Use of Library Materials

Finally, the committee approved agreements on K-12, K-20, and Montana University System shared policy goals and accountability measures that were developed by a subcommittee appointed for that purpose.

The committee's final meeting of the interim is scheduled for Aug. 16-17. For more information, contact Leanne Kurtz, committee staff, at 406-444-3593 or [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

## Energy Committee Continues Its Work on Reviewing State Energy Policy

In preparation for a meeting at the end of July, the Energy and Telecommunications Interim Committee is seeking public comment on a proposed energy policy for Montana. The committee will meet July 28-29 in Room 172 of the state Capitol. The time has yet to be determined.

Over the past several months, the committee has developed draft energy policy statements. The ETIC agreed to expand Montana's existing energy policy and to examine two pieces of draft legislation. The legislation and a draft energy report discussing information and processes followed by the ETIC in reaching its conclusions include:

- LC 6000 – Revised Energy Policy
- LC 6001 – Revised Energy Policy Review Process
- “Montana’s Energy Policy Review, SB 290: A look at existing policy and suggested revisions”

Public comment on the two bill drafts, draft report, and associated draft findings will be accepted through July 7. The materials are available online at [leg.mt.gov/etic](http://leg.mt.gov/etic). Staff will compile the public comments received by the deadline for review by committee members in advance of the July meeting. The public may also provide comment at the meeting. At that time, the committee will consider revisions to the report, findings, and draft legislation.

Public comments should be submitted to Sonja Nowakowski, committee staff, at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) (put energy policy in the subject line) or Legislative Services Division, Attn. Sonja Nowakowski, P.O. Box 201704, Helena, MT 59620-1704.

The committee has also scheduled a panel discussion on telecommunications in Montana. Panelists will focus on the multitude of potential mergers in the industry. A discussion of interoperability in Montana and an update on 9-1-1 programs in Montana are also planned.

Rounding out the July agenda is a hydroelectric power overview, an update on geothermal activity in Montana, and a review of transmission line development in the state.

For more information about the ETIC, contact Sonja Nowakowski at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or 406-444-3078.

## EQC to Consider Public Comment on Biomass, Recycling, Public Access Studies

The Environmental Quality Council will meet July 22-23 to consider public comments received in response to interim studies of biomass, recycling, and public access to private land for tourism and recreational activities. The EQC also will hear a report on grizzly bear management and receive an update on fire suppression activities.

The council will meet in Room 172 of the state Capitol. The meeting will begin at 9 a.m. July 22 and 8 a.m. July 23.

The EQC has been seeking public comment on three separate draft study reports and two pieces of draft legislation related to its biomass study. The bill drafts, three draft reports, and associated draft findings are available for public comment through July 2. They are posted on the EQC website at [leg.mt.gov/eqc](http://leg.mt.gov/eqc).

Staff will compile the public comments for review by EQC members in advance of the July meeting. The public may also provide comment at the meeting. At that time, the EQC will consider revisions to the reports and draft legislation.

Other agenda items include:

- a presentation of legislative proposals for the 2011 session by the Department of Environmental Quality and Department of Natural Resources;

- Department of Agriculture compliance and enforcement reports;
- an update on PPL Montana v. State of Montana;
- an update on the Clark Fork River Basin Task Force;
- a report on the Department of Fish, Wildlife, and Parks Crucial Areas Planning Systems; and
- an update on the state Petroleum Tank Release Fund, including a discussion of rulemaking and potential legislation related to mixing zones.

The agenda and meeting materials will be posted on the EQC website at [leg.mt.gov/eqc](http://leg.mt.gov/eqc). For more information, contact Todd Everts at 406-444-3747 or [teverts@mt.gov](mailto:teverts@mt.gov), or Hope Stockwell at 406-444-1640 or [hstockwell@mt.gov](mailto:hstockwell@mt.gov).

## Audit Committee Reviews Four Audits, Reappoints Legislative Auditor

The Legislative Audit Committee held hearings June 23 on four audits. The committee also reappointed Legislative Auditor Tori Hunthausen to a second two-year term.

Audit and discussion highlights included:

- An audit of the Montana Public Vehicle Fueling Program detailed how 8,400 fuel cards were used to purchase \$13 million in gasoline and diesel last year. The audit reviewed 112,000 transactions, and while most purchases appeared reasonable, there were purchases for non-fuel items, like hotel rooms, parking garage fees and grocery store items; for volume of gas beyond the vehicle's tank capacity; for premium fuel, unnecessarily costing the state more than \$33,000; and for diesel fuel in unleaded fuel vehicles.

In addition, the audit found hundreds of unused fuel cards and a lack of security at some of the state's 72 bulk fuel tanks. Department of Administration Director Janet Kelly and Department of Transportation Director Jim Lynch said they are working on comprehensive fuel policies, will tighten controls, and will examine unusual purchases. The committee asked for an update at the next audit committee meeting.

- An information systems audit of Statewide Accounting, Budgeting, and Human Resources Systems (SABHRS) found that some Department of Administration staff have unneeded, excessive access to the system.

- A performance audit of Water Rights Adjudication found that the process of legally determining pre-1973 water rights won't be fully complete until at least 2028, although the agencies involved (Department of Natural Resources and Conservation and Montana Water Court) are meeting statutory deadlines for certain parts of the process.
- A follow-up to a 2008 audit, Weed Management at State Parks and Fishing Access Sites, found the Department of Fish, Wildlife and Parks has not implemented all recommendations.
- Approved the 2011 operating plan and considered a preliminary 2012-13 budget.

Audit summaries and full text are available at [leg.mt.gov/audit](http://leg.mt.gov/).

Committee members are Sen. Mitch Tropila (D-Great Falls), chair; Rep. Dee Brown (R-Hungry Horse), vice chair; Sen. Greg Barkus (R-Kalispell); Sen. John Brenden (R-Scobey); Sen. Taylor Brown (R-Huntley); Sen. Mike Cooney (D-Helena); Rep. Betsy Hands (D-Missoula); Sen. Cliff Larsen (D-Missoula); Rep. Scott Mendenhall (D-Clancy); Rep. Carolyn Pease-Lopez (D-Billings); Rep. Wayne Stahl (R-Saco); and Rep. Bill Wilson (D-Great Falls).

## Legislative Council Appoints New Code Commissioner, Plans for Next Session

The three subcommittees of the Legislative Council (Rules Subcommittee, Legislative Space Subcommittee, and Management Subcommittee) met June 1 followed by a full council meeting on June 2.

The Rules Subcommittee discussed the concept of a parliamentarian and finished up its recommendations for changes to joint, House, and Senate rules. Subcommittee members have been considering changes to the rules to make them easier to understand and use. They have been working on a searchable database, shortcuts, and reference guides to make the rules more accessible. The council will present the proposed changes to the legislative session rules committees in December.

The Legislative Space Subcommittee supported a study of current and future legislative needs for space. A study report is scheduled for a September meeting.

## Heiman New Code Commissioner



*Lee Heiman*

The council appointed Lee Heiman, staff attorney, as the new code commissioner. The duties of code commissioner and legal services director have been separated with the retirement of Greg Petesch. Heiman has long been involved with the codification and annotations process. He will mentor the new legal services director to assume the duties of code commissioner at a later time. The new legal services director is expected to start in late July and will be featured in an article in the August issue of *The Interim*.

## 2011 Session Preparations

The council worked with staff on a preliminary budget for the Legislative Services Division. The council appointed a subcommittee to work on specific LSD budget details. Subcommittee members are Sens. Carol Williams and Jeff Essmann and Reps. Tom McGillvray and Mike Phillips.

The council also agreed to support the Legislative Finance Committee's concept of developing a state budget that identifies 5 percent reductions from the 2010 adjusted base as required by 17-7-111, MCA. The House Appropriations Committee could recommend that as a starting point for budget deliberations during the 2011 session.

The council authorized the drafting of several appropriation bills requested by the Office of Budget and Program Planning. The drafts include the general appropriations act, as well as measures dealing with long-range planning and various grant, loan, bonding, and other appropriations.

The council discussed adjustments to policies and procedures for credentialing media representatives. The council will review the policies and procedures in September.

The council also set tentative dates for legislative caucuses, orientation for new legislators, and various training sessions for legislators, as outlined below.

- Senate and House Caucuses: Nov. 17, 10 a.m.

- Leadership Orientation: Nov. 17
- Legislator Orientation: Nov. 17-19
- Legislative Dinner: evening of Nov. 17
- Rules Committee Training and Hearing on Rules: morning of Dec. 6
- Committee Chair Training: afternoon of Dec. 6
- Law School for Legislators: morning of Jan. 4
- Legislative Rules Training: afternoon of Jan. 5

Finally, the council worked on strategic planning initiatives, including creating interdivisional staff teams and improving the interim committee process.

### **Next Meeting in September**

The council is scheduled to meet Sept. 9. Among other topics, it will work on proposed legislative rules and adopt a preliminary budget for the Legislative Services Division.

For more information about the council or to view agendas, minutes, and meeting materials, visit the Legislative Council's website [leg.mt.gov/legcouncil](http://leg.mt.gov/legcouncil), or contact Susan Byorth Fox at 406 444-3066 or [sfox@mt.gov](mailto:sfox@mt.gov).

Members of the Legislative Council are Reps. Dennis Himmelberger (chair), Bob Bergren, Margarett Campbell, Tom McGillvray, Jesse O'Hara, Mike Phillips, and Sens. Carol Williams (vice chair), John Brueggeman, Jeff Essmann, Mitch Tropila, Bob Story, and David Wanzenried.

## **Legislative Finance Committee Covers Wide Range of State Budget Topics in June**

The Legislative Finance Committee (LFC) met June 14-15. The agenda and reports for the meeting are available on the Legislative Fiscal Division (LFD) website at [leg.mt.gov/fiscal](http://leg.mt.gov/fiscal). For more information, contact Amy Carlson, LFD director, at [acarlson@mt.gov](mailto:acarlson@mt.gov) or 406-444-2986.

### **Land Board Decision on PPL Payment**

In an appeal from a state District Court ruling on the use of certain riverbeds in the state by PPL Montana, the Montana Supreme Court upheld the lower court's decision that title to the riverbeds of the Missouri, Clark Fork, and Madison Rivers passed to Montana when it became a state in 1889 (*PPL Montana, LLC v. State*, 2010 MT 64). However, the Court reversed the District Court's conclusion that the

riverbeds are "school trust lands" and instead held that they are public trust lands under Article X, section 11, of the Montana Constitution.

The state and the Board of Land Commissioners (Land Board) have a fiduciary responsibility to manage the land for the benefit of the public. As part of the decision, the Supreme Court upheld the District Court's method of calculating damages, and PPL was ordered to pay approximately \$41 million (plus interest) in compensatory damages to the state for improper use of the riverbeds. PPL has been considering whether to appeal the decision to the U.S. Supreme Court. The deadline to appeal was June 28.

In May, the Land Board passed a resolution to expend the compensatory damages without appropriation authority. This action required the board to classify the compensatory damages as non-state revenue to avoid the need for a legislative appropriation. Non-state funds, as defined in statute, are those funds from a non-state source that are restricted by law or agreement, such as a contract, trust agreement, or donation.

Legislative staff said that this action appears to be a misclassification of funds, as it is not clear how damages that are derived from the violation of a state statute and generated from a state asset can be classified as non-state funds. In addition, legislative legal staff opined that these funds are subject to appropriation law.

The LFC notified the Land Board of its desire to avoid constitutional issues of authority and to work with the board and its staff to resolve the issue. The LFC appointed Sens. Dave Wanzenried and Rick Ripley to represent the committee in these discussions. The letter to the Land Board can be found on the LFD website at <http://www.leg.mt.gov/css/fiscal/reports/2009-2010-interim-reports.asp#june2010>. For more information, contact Barb Smith at [basmith@mt.gov](mailto:basmith@mt.gov) or 406-444-5347.

### **General Fund Balance Update**

Total general fund revenue collections through May continue to lag the revenue estimates used by the Legislature for FY 2010. As shown in Figure 1 (next page), total general fund revenues for the 2011 biennium are estimated to be \$349.9 million less than expected by the Legislature, the same amount as estimated since February. Although

Figure 1

Estimated Revenue Changes From HJ 2 (Millions)					
Category	Current Year Trend	FY 2010	FY 2011	Biennium	
Individual Income Tax	↓	(\$118.1)	(\$95.0)	(\$213.1)	
Corporation Income Tax	↑	(58.2)	(52.7)	(110.9)	
Oil & Gas Production Tax	▬	21.3	12.3	33.6	
TCA Interest	↓	(4.5)	(6.4)	(10.9)	
Video Gaming Tax	↓	(11.5)	(11.1)	(22.6)	
Vehicle Fees/Taxes	?	(7.0)	(4.8)	(11.8)	
Remaining Sources	?	(4.1)	(10.1)	(14.2)	
<b>Current Estimate</b>		<b>(\$182.1)</b>	<b>(\$167.8)</b>	<b>(\$349.9)</b>	
<b>February Estimate</b>		<b>(\$182.1)</b>	<b>(\$167.8)</b>	<b>(\$349.9)</b>	
<b>Change From February Estimate</b>		<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	

individual income taxes are expected to decline by more than shown in Figure 1 (\$15 million more per year), corporation income taxes are not expected to decline by as much (\$15 million less per year). Since the adjustments would be offsetting, the total anticipated shortfall remains unchanged.

When the potential shortfall from individual and corporation income taxes, TCA interest earnings, video gaming taxes, vehicle fees/taxes, and the remaining sources is combined with the potential excess from oil and gas production taxes, total general fund revenues could be below the HJR 2 revenue estimate for FY 2010 by \$182.1 million. Using these trends, combined with recent economic and tax return data, FY 2011 general fund revenues could also be below the HJR 2 revenue estimate by \$167.8 million. The \$349.9 million shortfall is about 9.7 percent of the HJR 2 revenue estimate.

Last session, the Legislature adopted a policy to maintain a higher general fund ending fund balance for the 2011 biennium (\$282.4 million) in the event of revenue shortfalls. The potential shortfalls discussed above would decrease this projected balance to negative \$63.0 million (Figure 2a) before the spending reduction proposals of the executive. This projected balance includes the additional \$5.0 million received in the FY 2009 ending balance but does not include any supplemental appropriations. Staff is currently researching the need for supplemental appropriations.

The projected balance of negative \$63.0 million is mitigated to a positive \$81.5 million when the following items are included:

- Tier 1 FMAP
- Federal Clawback
- Executive Spending Reductions
- Legislative and Judicial Spending Reductions
- Otter Creek Bonus Payment

The PPL Montana riverbed litigation, federal FMAP extension, and the executive proposal to eliminate some transfers have not been included at this time. As shown in Figure 2b (next page), these issues are pending or require legislative action. Figure 2b shows progression in the projected general fund balance if these issues materialize in the future.

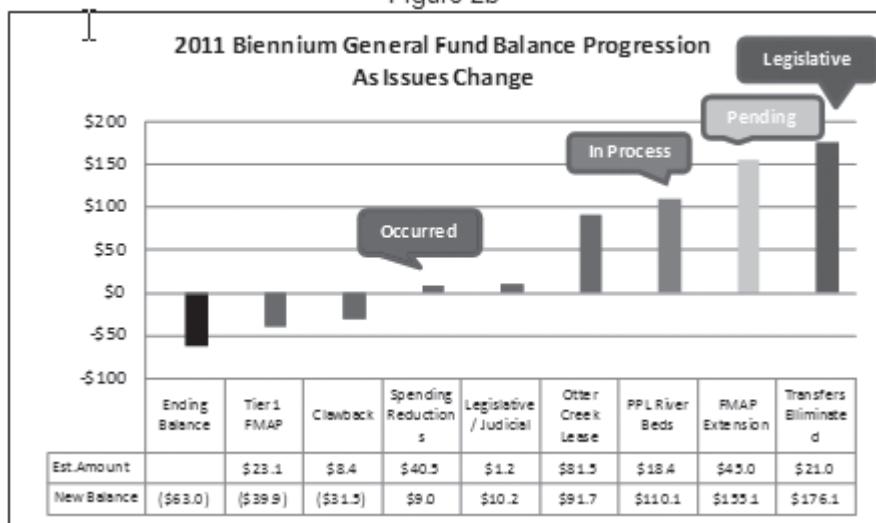
As discussed in previous general fund revenue reports, the revenue collection trends have stabilized at the reduced rate projected in February. This is potentially good news because it may mean that revenues have reached the bottom of the decline. There are some positive signs. Withholding tax payments have been improving since February, national corporate profitability is up, consumer spending has improved, and the equity markets have steadily improved until the last week or two.

While these indicators may point to a revenue improvement in FY 2011, revised estimates for FY 2011 have already been factored into the estimates shown in Figure 1. As revenues fall below expectations, the structural gap (difference between ongoing revenues and ongoing expenditures) widens, creating a significant budget challenge for the next Legislature. For more information, contact Terry Johnson at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or 406-444-2952.

2011 Biennium General Fund Outlook In Millions	
	Biennium
Legislative Projected Balance	\$282.4
FY2009 Balance Change	5.0
Net Revenue Changes	(349.9)
Fund Balance Adjustments	(0.5)
Supplements	?
<b>New Projected Balance *</b>	<b>(\$63.0)</b>

\* Before executive spending reduction recommendations

Figure 2b



## Options for Closing Budget Gap

In March, the LFC asked staff to prepare a “reference book” with options for reducing expenditures, increasing revenues, or both, for consideration by the Legislature next session as it balances the 2013 biennium budget. The reference book presented at the June meeting was a preliminary, brainstorming starting point for that discussion. It needs to be understood that these are options, not recommendations. Many of the options are incomplete and will require additional work by staff.

The LFC appointed small groups to examine the options in more detail. Members of other interim committees will be invited to participate in the discussions. The groups will provide feedback to staff for additional work.

Meetings of the groups will be posted to the LFD website as they are scheduled. The current reference book can be found online at [leg.mt.gov](http://leg.mt.gov) under “What’s New.” For additional information, contact Taryn Purdy at [tpurdy@mt.gov](mailto:tpurdy@mt.gov) or 406-444-5383.

## Correctional System Stressors, Challenges

LFD staff presented a report on the state correctional system entitled “The Montana Correctional System: Stressors and Challenges.” The report noted that in FY 2010 the overall population levels in the corrections system are slightly below FY 2009 levels. The population in the male secure care, one of the costliest segments of the system, continues to increase. However, that increase has been

offset by decreases in probation and parole caseloads.

The Department of Corrections expects that FY 2010 expenditures, including spending reductions ordered by the governor earlier this year, will be within budgeted levels if carry-forward appropriations are included.

Overall population levels are expected to increase in the 2013 biennium, putting financial pressure on the state budget, particularly in high-cost segments of the population. Many other states have or are implementing cost containment strategies by:

- mitigating the number of offenders entering the system;
- increasing the number of offenders leaving the system;
- reducing the average length of stay in the system; and
- placing more offenders in lower security areas that are generally less costly than higher security settings.

Common cost-containment strategies used by states that are discussed in the report include:

- early release of offenders, including use of earned time and time for good behavior;
- reducing the number of offenders incarcerated, emphasizing treatment and programs to reduce recidivism;
- implementing strategies to reduce the number of offenders on probation or parole subject to revocation and reincarceration;
- assisting offenders to successfully prepare for reentry into community life;
- provider rate reductions; and
- shortened lengths of stay.

The report also discusses the likelihood that the male secure population will exceed capacity in the near future. One way to deal with this problem may be to place some offenders in alternative settings, which would potentially free prison beds for incoming offenders. The report discusses three subpopulations that might be served in alternative settings, including sexual offenders, offenders with geriatric or

medical needs, and offenders with mental health needs. For more information, contact Pat Gervais at [pagervais@mt.gov](mailto:pagervais@mt.gov) or 406-444-1795.

## Public Defender System Update

Impacting caseload and costs and minimum caseload requirements for selected staff within the public defender system were the topics of a follow-up report to the LFC. In March, the committee requested more information regarding these two items.

The report presented options for impacting caseload and costs including:

- changing eligibility criteria related to determination of indigence based upon household income;
- changing eligibility criteria related to determination of indigence based upon insufficient resources to retain competent private counsel;
- changing the statutory requirements related to parties that must be served by the public defender system; and
- eliminating jail time as a potential penalty for certain misdemeanor offenses since the potential for jail time is a driver of the need for public defender representation.

The LFC requested two bill drafts related to the public defender system. One would remove jail time as a penalty for certain misdemeanor offenses. The other would require local governments to pay public defender costs related to local ordinances that have jail time as a potential penalty. The details of the drafts will be developed by an LFC subcommittee.

The report also discussed the American University findings related to minimum caseload requirements for certain managers within the public defender system and options for committee consideration. For more information, contact Pat Gervais at [pagervais@mt.gov](mailto:pagervais@mt.gov) or 406-444-1795.

## Performance Measurement Initiative

The LFC adopted the report “Goals and Performance Measurements as Part of the Appropriation Process.” The LFC had concluded that the use of performance measurement in the legislative appropriation process last session was not consistently applied. The LFC asked staff to develop a way to use performance measurements to

assist the Legislature in evaluating and prioritizing budget reductions.

To integrate performance measurement into the legislative process, two major changes need to occur. First, the Legislature and leadership have to agree that it is important to know how outcomes vary with levels of funding, how those outcomes will be determined, and how that fits within legislative priorities. Second, the Legislature will need to request the appropriate information from state agencies to ensure that it is fully informed before taking action.

The report, found at <http://leg.mt.gov/css/fiscal/reports/2009-2010-interim-reports.asp#june2010>, outlines the LFC recommendations on the process the Legislature should follow next session to incorporate performance measurement into the appropriations process. The LFC adopted the following steps to bring the process to the Legislature:

- educating the Legislative Council about this process;
- requiring the LFC performance measurement workgroups to select critical goals (one or two for most agencies), performance measures, and funding priorities for the upcoming legislative session at the October meeting of the LFC;
- asking LFD to work with the governor’s budget office to incorporate the impact analysis in the budget process and the legislative request for information in agency presentations; and
- directing LFD staff to develop training for members of the House Appropriations and Senate Finance and Claims Committees.

For additional information regarding the performance measurement initiative, contact Barb Smith at [basmith@mt.gov](mailto:basmith@mt.gov) or 406-444-5347 or Kris Wilkinson at [kwilkinson@mt.gov](mailto:kwilkinson@mt.gov) or 406-444-2722.

## Other Reports on LFD Website

There are a few other reports to the LFC that were not orally presented but can be found on the website or requested if interested:

- Update on Pensions Unfunded Liability and SAVA Activities – Jon Moe

- Long Range Project Status – Cathy Duncan

### **Revamped Fiscal Division Website**

The LFD website has been reorganized to make it easier to find specific information. You are invited to visit the LFD website at [leg.mt.gov/fiscal](http://leg.mt.gov/fiscal) and explore the various links to fiscal information.

A new feature is a “chart of the week” that will highlight different fiscal issues. The LFD staff welcomes comments that might help us to further improve the website. Staff would also like to hear about how the changes are working for you. If you have comments, contact Diane McDuffie at [dimcduffle@mt.gov](mailto:dimcduffle@mt.gov) or 406-444-2063 or Susie Lindsay at [slindsay@mt.gov](mailto:slindsay@mt.gov) or 406-444-0027.

### **Revenue Committee to Meet Aug. 2-3**

The Revenue and Transportation Interim Committee will meet August 2-3. Its two subcommittees on Residential and Commercial Property Reappraisal and Agricultural Land and Forest Land Property Reappraisal are scheduled to meet the morning of Aug. 2. The full committee will convene at 1 p.m. Aug. 2 in Room 137 and at 8 a.m. Aug. 3 in the same room.

Although the full agenda has not been set, the committee plans to have an in-depth discussion of ways to improve the revenue estimating process. The Department of Revenue is scheduled to report on shortening the reappraisal cycle for agricultural land, residential and commercial property, and forest lands. Other agenda items include:

- property tax circuit breaker bill drafts;
- bill drafts to clarify certain provisions of existing law;
- review of proposed agency legislation, if any; and
- Department of Revenue and Department of Transportation reports.

The agendas for the full committee and subcommittees will be available by mid-July on the committee webpage at [leg.mt.gov/rtic](http://leg.mt.gov/rtic). For more information, contact Jeff Martin, committee staff, at 406-444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

### **Water Policy Committee to Debate Water Marketing, Septic System Draft Legislation**

The Water Policy Interim Committee will debate possible legislation and review a draft report at a meeting July 26-27 in Room 172 of the state Capitol. The meeting time has not yet been determined.

The committee will continue to examine a bill draft that would enable the marketing of water to other users without specific contracts in place. Currently, in order to market water, the water right holder must identify how much water will be used, where it will be used, and who will use it.

The proposal would allow a water right holder to change a water right from its current use, such as irrigation, to marketing for aquifer recharge or mitigation. That water could be purchased by another user to offset the effects of a new appropriation, such as a community water system for a subdivision.

The committee also will debate a proposal that would regulate the location of septic systems. Current Department of Environmental Quality rules require that a subdivision lot using a single water well and septic system must be at least one acre in size. This requirement dates to the 1970s. The minimum lot size with either community water or sewer is one-half acre. There is no minimum lot size if both community water and sewer systems are used.

Individual septic systems use a drain field and a mixing zone. Solid wastes settle in the septic tank and the liquid effluent is discharged into a drain field. Beyond the drain field is the mixing zone, defined in law as an area where water quality standards may be exceeded.

The draft legislation the committee will debate would limit the mixing zone to the lot where the drain field is located.

For more information about the Water Policy Committee, contact Joe Kolman, committee staff, at 406-444-9280 or [jkolman@mt.gov](mailto:jkolman@mt.gov). Or visit [leg.mt.gov/water](http://leg.mt.gov/water).

## The Back Page

# The General Fund Budget: Looking Forward(?) to 2011 Session

**By Taryn Purdy**  
**Legislative Fiscal Division**

All indications are that the 2011 legislative session will be a fiscally challenging one. The Legislative Fiscal Division (LFD) estimates that the next Legislature will face a budget deficit of almost \$400 million (assuming a \$100 million ending fund balance and current service level increases). This deficit is caused primarily by a deep, extended reduction in revenues, coupled with upward pressure on expenditures for current services. This combination will likely force an examination of state government services and revenue sources and even the role of state government in Montana.

### Why Is This Downturn Different?

Past fiscal crises, while painful, were generally fairly short-lived. It is the severity of the reduction in revenues and the projection that it will take until FY 2015 to return to FY 2008 levels that differentiate this fiscal crisis from other downturns. The table below illustrates the depth of the reduction.

The most recent downturn that significantly impacted state revenues occurred in 2002-2003. While the 2003 Legislature faced a very large deficit, projections were for

a fairly rapid recovery. Consequently, the Legislature had a number of options to sustain state services with temporary fixes, an advantage the next Legislature will not have due to the long-term nature of reduced revenues.

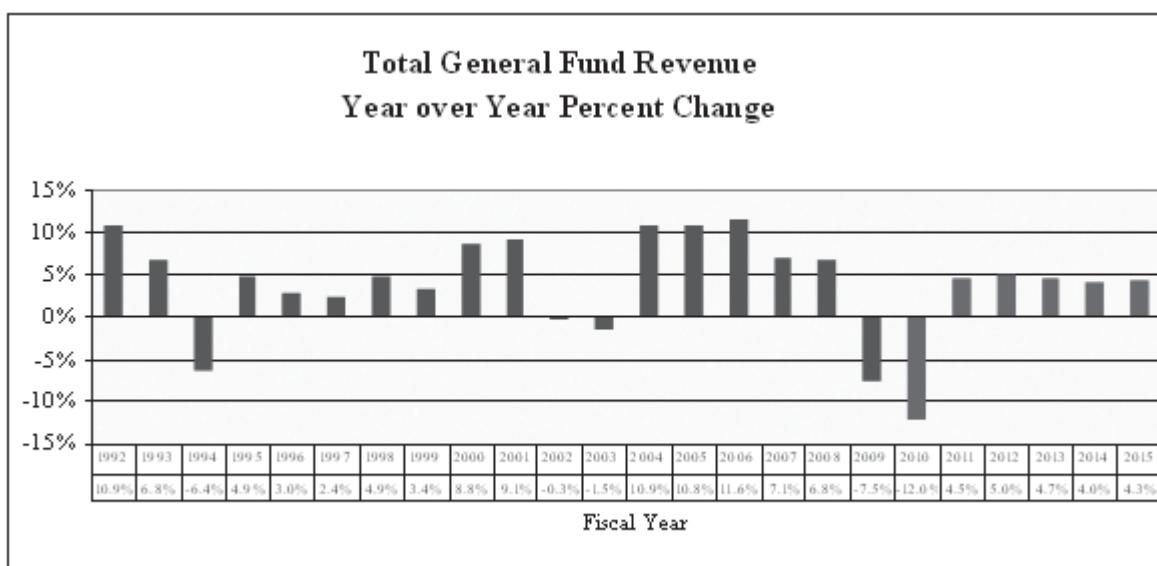
### Why Are Revenues Down So Much?

While a number of factors are at work, the primary reason for the length and depth of the reduction is that over half of all general fund revenue comes from individual and corporate income taxes. Both of these sources have been adversely impacted by the deep national and world recession that began in 2008.

### Won't Otter Creek Development Help?

The state has received an upfront payment for Otter Creek coal development that directly offsets general fund expenditures in K-12 education. So why hasn't the projected imbalance been reduced?

The answer lies in the difference between expenditures that are considered one-time-only (OTO) and consequently can be funded with OTO money (such as the recent Otter Creek and potential PPL Montana payments for damages), and those functions of state government that require ongoing revenues to sustain them.



So, the recent large infusion of cash from Otter Creek has helped the state cash flow and reduced the need for further immediate cuts to maintain state solvency and the statutorily required ending fund balance. However, the lack of sustainability of current state services remains, with no short-term end in sight.

## Why Does Spending on Existing Services Rise?

There are a number of reasons that expenditures for services of state government can continue to increase during an economic downturn. Among them are:

- State government's basic missions generally do not decline with the economy and in fact are likely to rise:
  - a. Human services will likely see caseload increases as more people fall economically to levels that qualify them for assistance.
  - b. The number of children in elementary and high schools does not depend on the overall economy, and often enrollment at higher education institutions increases due to reduced employment opportunities.
  - c. Although there is likely to be a lag time, economic downturns can increase correctional populations and other public-safety-related expenditures.
- Underlying expenditure pressures are often driven by costs, such as medical costs, that typically outpace

inflation, regardless of economic conditions.

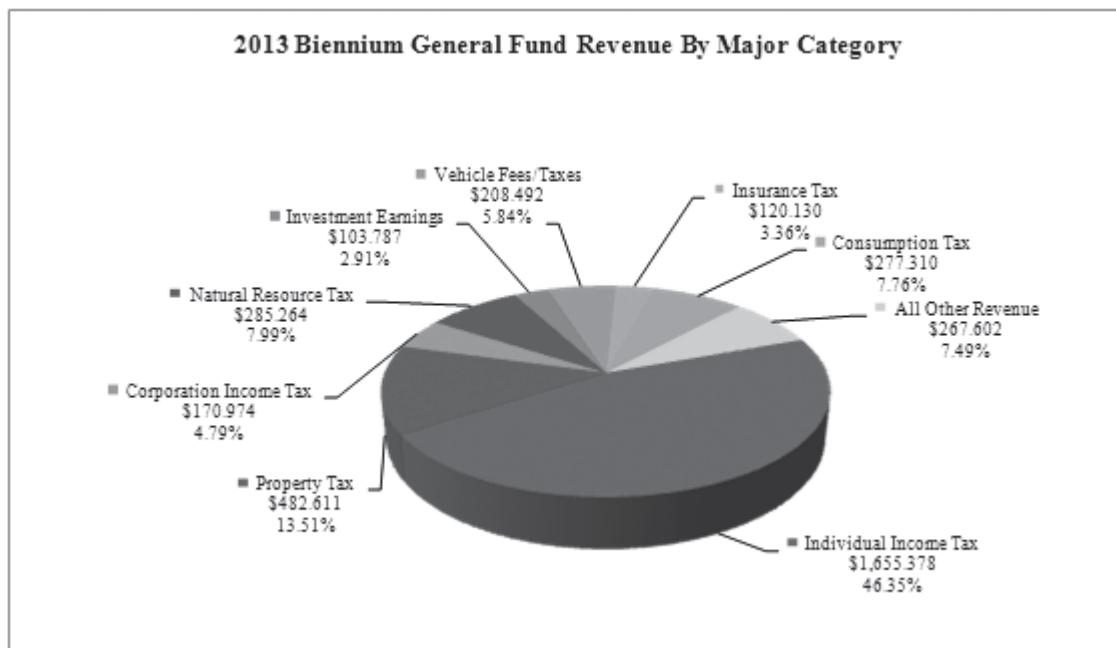
- Demand for state services always outstrips available revenues. Economic upturns are seen by interested parties as opportunities to fund more priorities.

## What Are the Next Steps?

The executive branch is working on the governor's budget proposal for presentation to the 2011 Legislature. The governor has an obligation to propose a balanced budget, but the Legislature has a constitutional duty to pass one. In normal years, the Legislature usually waits for the governor to submit his budget to publicly discuss in earnest its own ideas for meeting state priorities and balancing the budget.

Because this year is so different, the Legislative Finance Committee (LFC) has already begun identifying and discussing potential options to deal with the long-term budget imbalance. LFD staff has begun compiling a "reference book" that lists a number of options for legislative consideration in the next session. The reference book includes both expenditure and revenue options. It will continue to evolve through the 2011 session.

In June, the LFC decided to form small groups to examine the major expenditure areas of the budget and to invite members of other interim committees to discuss the options in more detail. The LFC also decided to send members to other interim committees to answer questions



and discuss options. The small groups would have several benefits. They would:

- allow more in-depth review of the individual options by legislators;
- allow various members from each caucus to be well informed of the issues and options; and
- provide feedback that would aid staff in setting priorities during the budget analysis.

### Where's the Money Come From?

The pie chart on p. 14 shows the sources of revenue as projected by the LFD for the 2013 biennium. Part of the Legislature's task will include determining what strategies, if any, will be used to increase deposits to the general fund.

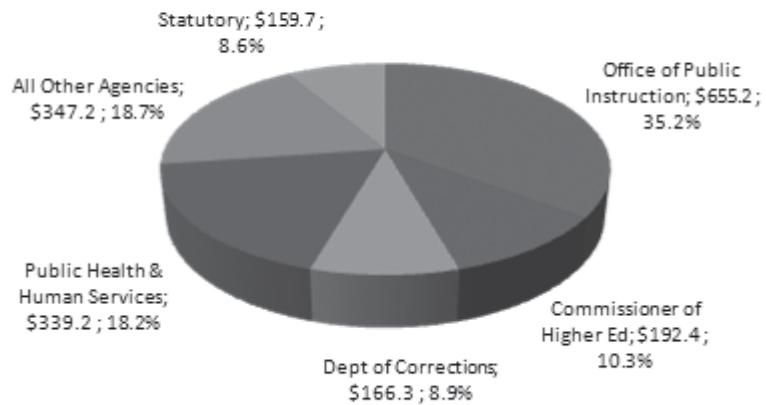
### How Does the State Spend Its Money?

State government contains many moving parts that affect all Montanans to some degree. However, most state expenditures are concentrated in four service areas: K-12 education, higher education, human services, and corrections.

Because these areas (commonly referred to as “educate, medicate, and incarcerate”) make up such a large portion of state expenditures, they demand the most attention during any legislative session and are critical to dealing with the state’s financial condition. The pie chart on this page shows the actual expenditures for state government in FY 2009.

When these expenditures are combined with statutory appropriations and transfers, most of which are for payments to local governments and state pension contributions to local fire and law enforcement, they comprise over 80 percent of general fund expenditures. With a deficit of almost \$400 million (again assuming a \$100 million ending fund balance and current service level increases), this means that all other areas of ongoing general fund expenditure (the Legislature, the Governor’s Office, the courts, revenue collection, and a large variety

**General Fund Expenditures - FY 2009 \$1860 Million**



of other services) could be eliminated and the deficit would still not be completely erased unless revenues were enhanced. Therefore, if the Legislature is to resolve the budget imbalance and reach a structural balance, these areas of the budget will have to be included in any action.

The issues arise in force when the actual choices that would need to be made to materially impact expenditures are identified. A number of factors will make reducing expenditures in these areas especially challenging:

- The state took a number of steps to respond to a lawsuit challenging Montana’s K-12 support. In addition, decisions made on the state level often have a direct bearing on local property tax payers. While there are a number of ways to cut the budget for K-12, the impact on local property tax payers, operations of schools, and compliance with court decisions must all be taken into account.
- Human service agencies provide a variety of services for the state’s most vulnerable citizens. In an economic downturn, the demand for those services often increases. Reductions in expenditures by the Department of Public Health and Human Services will have direct impacts on those populations. In addition, a large percentage of the general fund in this agency is used to match federal funds. Any reduction in general fund will cause a reduction in federal funds, magnifying the impact.
- Corrections populations are near the capacity in the system. Although populations are rising fairly

slowly, the high cost of the secure-care segment of the population is growing more rapidly. In addition, Montana has already incorporated many of the actions that other states are using to reduce populations, including treatment programs and various diversion strategies.

### **Who Will Feel the Impacts of Reductions?**

In looking at expenditures of state government, it is important to keep in mind where money is spent and where the impact of reductions will be felt. Many people perceive state government as a Helena enterprise. They think reductions in state government will primarily impact Helena. But this is not the case.

All but a small percentage of expenditures in the four major budget areas of state government, as well as almost all statutory appropriations, are made in or for communities throughout the state. The following are examples:<sup>\*</sup>

- **K-12 education:** Funds are transferred to all school districts. Less than 1.5 percent is retained for central administration in the Office of Public Instruction.
- **Higher education:** Funds are transferred to units of the Montana University System, including the three community colleges and student and tribal assistance. Less than 2 percent is used for central administration in the Office of the Commissioner of Higher Education.
- **Human services:** Medicaid expenditures account for almost 45 percent of the budget. These payments go to medical providers such as doctors, hospitals,

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\* All percentages are based on 2011 biennium legislative appropriations in HB 2 and HB 13. Education and corrections are general fund only, while human services are all funds.

laboratories, and group and therapeutic homes. About 15 percent goes to other services around the state not covered by Medicaid, including the foster care system, subsidized adoptions, child care, aging services, work support, and disability and community mental health services. Another 15.5 percent is used to support institutions in Boulder, Warm Springs, Lewistown, Glendive, and Columbia Falls. Another 7.5 percent supports field staff located throughout the state for eligibility determination, social work, and a variety of other functions.

- **Corrections:** Almost 92 percent of expenditures are made outside of Helena. These pay, among other things, for probation and parole officers located throughout the state and secure care and treatment facilities in Shelby, Deer Lodge, Butte, Great Falls, Glendive, Billings, and Missoula

It is a general rule that if \$1 is withdrawn from the economy, the actual impact is more than \$1 due to the normal turnover of money. Any reduction in state government expenditures (without an attendant reduction in tax rates) throughout the state will have the same ripple effect. If federal funds are also reduced as a result of any cuts made, the same principal will be at work. Therefore, reductions in state government will affect all Montanans to some degree. The Legislature will have a very challenging task to balance the constitutional requirement of a balanced budget with both the impacts to Montanans and the amount Montanans can pay.

If you have questions, please contact the Legislative Fiscal Division at 406-444-2986 or visit its website at [leg.mt.gov/fiscal](http://leg.mt.gov/fiscal). To find the above-mentioned reference book, visit [leg.mt.gov](http://leg.mt.gov) and look under "What's New." Please note that this document represents a single point in time. It will evolve over the next several months as staff and legislators continue to work on it.

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

July 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6 State-Tribal Relations Comm, Browning	7 State-Tribal Relations Comm, Browning	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22 Environmental Quality Council, time TBA, Rm 172	23 Environmental Quality Council, time TBA, Rm 172	24
25	26 Water Policy Comm, time TBA, Rm 172	27 Water Policy Comm, time TBA, Rm 172	28 Energy & Telecomm Comm, time TBA, Rm 172	29 Energy & Telecomm Comm, time TBA, Rm 172	30	31

You can find the most up-to-date information  
about legislative interim committee meetings  
on the Legislative Branch website

**leg.mt.gov**

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

August 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Residential & Commercial Property Appraisal Subcomm, 8 am, Rm 137  Agriculture & Forest Land Property Reappraisal Subcomm, 8 am, Rm 102  Revenue & Transportation Comm, 1 pm, Rm 137	3 Revenue & Transportation Comm, 8 am, Rm 137	4	5	6	7
8	9	10	11	12	13	14
15	16 Education & Local Govt Comm, time & place TBA	17 Education & Local Govt Comm, time & place TBA	18	19 Economic Affairs Comm, time & place TBA	20 Economic Affairs Comm, time & place TBA	21
22	23 Children, Families, Health & Human Services Comm, time & place TBA	24 Children, Families, Health & Human Services Comm, time & place TBA	25 Legislative Computer Systems Planning Council, time & place TBA	26	27	28
29	30	31				

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